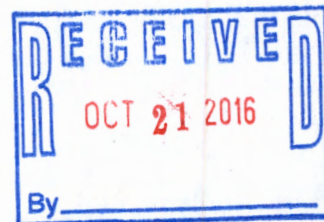


Lewis, Judith

From: Levine, Scott on behalf of OIG FOIA
Sent: Friday, October 21, 2016 4:07 PM
To: FOIA HQ
Subject: FW: FOIA request re investigative reports
Attachments: 2011-decemberTheDCFOIAtemplate.docx



For assignment to OIG.

From: Katie Watson [mailto:katie@dailycallernewsfoundation.org]
Sent: Friday, October 21, 2016 2:54 PM
To: OIG FOIA <OIG_FOIA@epa.gov>
Subject: FOIA request re investigative reports

Good afternoon,

Attached and below is a request under the Freedom of Information Act. Thank you!

October 21, 2016

ATTN: FOIA Public Liaison

EPA Office of Inspector General

Re: Freedom of Information Act (FOIA) Request

Fee waiver requested

Dear FOIA Officer:

Pursuant to the federal Freedom of Information Act, 5 U.S.C. § 552 *et seq.*, I request on behalf of The Daily Caller copies of the federal government's records described below.

- **Listing of all closed investigations in fiscal years 2015 and 2016 to date**

Further, you should be reminded of the policy in favor of disclosure mandated by President Barack Obama on January 26, 2009. President Obama instructed the executive departments and agencies to operate with a presumption towards disclosure. On this point the President stated as follows:

A democracy requires accountability, and accountability requires transparency. As Justice Louis Brandeis wrote, "sunlight is said to be the best of disinfectants." In our democracy, the Freedom of Information Act (FOIA), which encourages accountability through transparency, is the most prominent expression of a profound national commitment to ensuring an open Government. At the heart of that commitment is the idea that accountability is in the interest of the Government and the citizenry alike.

The Freedom of Information Act should be administered with a clear presumption: In the face of doubt, openness prevails. The Government should not keep information confidential merely because public officials might be embarrassed by disclosure, because errors and failures might be revealed, or because of speculative or abstract fears. Nondisclosure should never be based on an effort to protect the personal interests of Government officials at the expense of those they are supposed to serve. In responding to requests under the FOIA, executive branch agencies (agencies) should act promptly and in a spirit of cooperation, recognizing that such agencies are servants of the public. *Freedom of Information Act, Memorandum for the Heads of Executive Departments and Agencies*, 74, *Fed. Reg.* 4683 (January 26, 2009)

These instructions from the President were followed up by further instructions from Attorney General Eric Holder on March 19, 2009. The Attorney General stated as follows:

First, an agency should not withhold information simply because it may do so legally. I strongly encourage agencies to make discretionary disclosures of information. An agency should not withhold records merely because it can demonstrate, as a technical matter, that the records fall within the scope of a FOIA exemption.

Second, whenever an agency determines that it cannot make full disclosure of a requested record, it must consider whether it can make partial disclosure. Agencies should always be mindful that the FOIA requires them to take reasonable steps to segregate and release nonexempt information. Even if some parts of a record must be withheld, other parts either may not be covered by a statutory exemption, or may be covered only in a technical sense unrelated to the actual impact of disclosure. *The Freedom of Information Act, Attorney General Memorandum for Heads of Executive Departments and Agencies* (March 19, 2009)

Based on this policy I believe that there will be no records sought that the Department will withhold. However, in the event that records are withheld I request to be provided with the following information:

1. Reason each record is not being produced;
2. Type of record withheld;
3. Subject matter of record withheld; and
4. Date, author, and addressee, if applicable of the record.

Further, I request that the above information be indexed by individual record and comply with *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973), by providing information sufficient for a reasonable person to be able to ascertain whether the record sought is actually exempt from disclosure.

"A Vaughn Index must: (1) identify each document withheld; (2) state the statutory exemption claimed; and (3) explain how disclosure would damage the interests protected by the claimed exemption." *Citizens Commission on Human Rights v. FDA*, 45 F.3d 1325, 1326 n.1 (9th Cir. 1995)

Request for Waiver of Fees

Please note that 5 U.S.C. § 552 (a)(4)(A)(iv)(II) requires that you provide the first 100 copies to me at no charge. However, I am requesting a waiver of all fees under 5 U.S.C. § 552(a)(4)(A)(iii).

In order to help determine my status to assess fees, you should know that in my capacity as an employee of The Daily Caller I am a representative of the news media, and that this request is made as part of news gathering and dissemination.

Please take note of the Office of Management and Budget guidelines published March 27, 1987 (52 FR 10012) that include electronic publications and other nontraditional publishers as representatives of the news media.

FOIA also provides for a fee waiver when disclosure of the documents is in the public's interest. Specifically, FOIA states that:

Documents shall be furnished without any charge or at a charge reduced below the fees established under clause (ii) if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester. 5 U.S.C. § 552(a)(4)(A)(iii).

The information I seek is in the public interest because it will contribute significantly to public understanding of the operations or activities of the government. The Daily Caller exists to inform the public of information crucial to its understanding of matters of public concern. Information obtained pursuant to this request will be disseminated to the general public. A request for information from a representative of the news media is not considered to be for commercial use if the request is in support of news gathering.

The Daily Caller News Foundation regularly publishes information on the activities, structure, and operations of the federal government. This information is distributed to a large number of diverse individuals across the entire nation. The records sought are of the type which The Daily Caller regularly provides to the public on its website, www.DailyCaller.com. As such granting the request to waive fees is in the public interest.

Further, “Congress intended that the public interest standard be liberally construed and that fees not be used as an obstacle to disclosure of requested information.” *Eudey v. Central Intelligence Agency*, 478 F.Supp. 1175 (D.D.C. 1979). The central focus of the analysis in determining whether the fee waiver is in the public interest is whether the public rather than the requestor is the primary beneficiary of the release of the information. “The statute indicates that the issue to be considered by the agency is whether furnishing the information will primarily benefit the public at large or whether any benefit will inure primarily to the specific individual requesting the documents.” *Id.*

In the instant case the records sought will be used to further the public’s understanding of the operations of the federal government. The records sought will be disseminated widely to parties interested in the workings of the government and as such will not inure primarily to the benefit of the requestor. Therefore the request for waiver of fees should be granted pursuant to 5 U.S.C. § 552(a)(4)(A)(iii).

For reasons stated above, I request that charges for searching and duplicating be waived in their entirety. Should there be any difficulty with the fee waiver, please contact me by phone at 202.463.5055 or email at david@dailycaller.com so that The Daily Caller may decide whether to pay the fees or to appeal the denial of the request for waiver or reduction.

Conclusion

Pursuant to 5 U.S.C. § 552(a)(6)(A)(i) please provide the requested documents within 20 days. If for some reason all of the requested documents cannot be provided within 20 days I request that documents that are available within the 20 day time period be provided first and that when the remaining documents subsequently become available that they be provided at that time.

I request that any records disclosed pursuant to this request be indexed, to the extent feasible, in such a way as to enable the reader to readily ascertain to which number listed above the responsive records relate. If reasonably possible I request that responsive records be provided in electronic form on either unencrypted CDs or DVDs. If you have any questions as to the medium on which responsive records are to be provided please contact me in advance of sending the medium.

If my request is denied in whole or part, I ask that you justify all deletions by reference to specific exemptions of the act. I will also expect you to release all segregable portions of otherwise exempt material. I, of course, reserve the right to appeal your decision to withhold any information or to deny a waiver of fees.

Please send the requested records to the following address:

Kathryn Watson

katie@dailyallernewsfoundation.org

If you have any questions regarding this FOIA request please contact Kathryn Watson at 571.282.8391.

I look forward to your reply within 20 business days, as the statute requires. In the event that processing this request will take longer than 10 business days I request that you immediately provide me with an individualized tracking number for my request.

Thank you in advance for your assistance.

Sincerely,

Kathryn Watson

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Kathryn (Katie) Watson
Investigative Reporter
Daily Caller News Foundation
Cell: 571.282.8391
Twitter: @kathrynw5